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7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF WASHINGTON

9 UNITED STATES OF AMERICA,

10 Plaintiff,

Case No.: 13-CR-00100-RMP

11 vs.

12 Plea Agreement

13 EUSEVIO CHAVALLO, JR.,

14 Defendant.

Fed. R. Crim. P. 11(c)(1)(C)

15 Plaintiff, United States of America, by and through Michael C. Ormsby, United
16 States Attorney, for the Eastern District of Washington, and Matthew F. Duggan,
17 Assistant United States Attorney for the Eastern District of Washington, and
18 Defendant, EUSEVIO CHAVALLO, JR., and the Defendant's counsel, Robert M.
20 Seines, agree to the following Plea Agreement:

22 1. Guilty Plea and Maximum Statutory Penalties:

23 The Defendant agrees to plead guilty to Counts 1 and 4 of the Superseding
24 Indictment filed on May 21, 2014, charging the Defendant with Distribution of a
25 Mixture or Substance Containing a Detectable Amount of Methamphetamine, in
26

1 violation 21 U.S.C. § 841(a)(1), (b)(1)(C), and Possession of a Firearm in Furtherance
2 of a Drug Trafficking Crime, in violation of 18 U.S.C. § 924(c)(1)(A)(i).

3
4 The Defendant, understands that the charge of Distribution of a Mixture or
5 Substance Containing a Detectable Amount of Methamphetamine, in violation 21
6 U.S.C. § 841(a)(1), (b)(1)(C) (Count 1) is a class C felony and carries a statutory
7 maximum penalty of not more than a 20 year term of imprisonment, not less than a 3-
8 year term up to life supervised release, a fine not to exceed \$1,000,000; denial of
9 certain federal benefits; and a \$100 special penalty assessment; and that the charge of
10 Possession of a Firearm in Furtherance of a Drug Trafficking Crime, in violation of 18
11 U.S.C. § 924(c)(1)(A)(i) (Count 4) is a class A felony and carries a maximum
12 statutory penalty of not less than 5 years nor more than life imprisonment, consecutive
13 to any other sentence imposed, up to a 5-year term of supervised release; a fine not to
14 exceed \$250,000; and a \$100 special penalty assessment.

15
16 The Defendant further understands that a violation of a condition of supervised
17 release carries an additional penalty of re-imprisonment for all or part of the term of
18 supervised release without credit for time previously served on post-release
19 supervision.

1 2. Denial of Federal Benefits:

2 The Defendant understands that by entering a plea of guilty to Count 1 the
3 Defendant is no longer eligible for assistance under any state program funded under
4 part A of title IV of the Social Security Act (concerning Temporary Assistance for
5 Needy Families) or benefits under the food stamp program or any state program
6 carried out under the Food Stamp Act. 21 U.S.C. § 862a. Further, the Court may
7 deny the Defendant's eligibility to any grant, contract, loan, professional license, or
8 commercial license provided by an agency of the United States or by appropriated
9 funds of the United States. 21 U.S.C. § 862.

10 3. The Court is Not a Party to the Agreement:

11 The Court is not a party to this Plea Agreement and may accept or reject this
12 Plea Agreement. Sentencing is a matter that is solely within the discretion of the
13 Court. The Defendant understands that the Court is under no obligation to accept any
14 recommendations made by the United States and/or by the Defendant; that the Court
15 will obtain an independent report and sentencing recommendation from the U.S.
16 Probation Office; and that the Court may, in its discretion, impose any sentence it
17 deems appropriate up to the statutory maximums stated in this Plea Agreement.

18 The Defendant understands that this is a Plea Agreement pursuant to Fed. R.
19 Crim. P. 11(c)(1)(C) and that the United States may withdraw from this Plea
20 Agreement if the Court imposes a lesser sentence than agreed upon. The Defendant

1 further understands that the Defendant will have the option to withdraw from this Plea
2 Agreement if the Court imposes a sentence harsher than agreed upon.

3 4. Waiver of Constitutional Rights:

4 5. The Defendant, EUSEVIO CHAVALLO, JR., understands that by entering this
6 plea of guilty the Defendant is knowingly and voluntarily waiving certain
7 constitutional rights, including:

8 (a). The right to a jury trial;
9
10 (b). The right to see, hear and question the witnesses;
11 (c). The right to remain silent at trial;
12 (d). The right to testify at trial; and
13 (e). The right to compel witnesses to testify.

14 15. While the Defendant is waiving certain constitutional rights, the Defendant
16 understands the Defendant retains the right to be assisted through the sentencing and
17 any direct appeal of the conviction and sentence by an attorney, who will be appointed
18 at no cost if the Defendant cannot afford to hire an attorney. The Defendant also
19 acknowledges that any pretrial motions currently pending before the Court are waived.
20
21

22 4. Elements of the Offenses:

23 (a). Count 1:

24
25 The United States and the Defendant agree that in order to convict the
26 Defendant of Distribution of a Mixture or Substance Containing a Detectable Amount
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1 of Methamphetamine, in violation 21 U.S.C. § 841(a)(1), (b)(1)(C), the United States
2 would have to prove beyond a reasonable doubt the following elements:

3

4 (a). First, on May 15, 2013, in the Eastern District of Washington, the
5 Defendant, EUSEVIO CHAVALLO, JR., knowingly and
6 intentionally distributed methamphetamine; and
7

8 (b). Second, the Defendant knew that it was methamphetamine or some
9 other prohibited drug.

10 (c). Third, the substance was in fact methamphetamine.

11 (b). Count 4:

12 The United States and the Defendant agree that in order to convict the
13 Defendant of Possession of a Firearm in Furtherance of a Drug Trafficking Crime, in
14 violation of 18 U.S.C. § 924(c)(1)(A)(i), the United States would have to prove
15 beyond a reasonable doubt the following elements:

16

17 (a). First, on June 26, 2013, in the Eastern District of Washington, the
18 Defendant, EUSEVIO CHAVALLO, JR., committed the offense
19 of possession with intent to distribute methamphetamine, a drug
20 trafficking crime prosecutable in federal court;

21

22 (b). Second, the Defendant knowingly possessed the firearm;

(c). Third, the possession of the firearm was in furtherance of the Defendant's possession with intent to distribute methamphetamine.

5. Factual Basis and Statement of Facts:

The United States and the Defendant stipulate and agree that the following facts
5
are accurate; that the United States could prove these facts beyond a reasonable doubt
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at trial; and these facts constitute an adequate factual basis for EUSEVIO
7
CHAVALLO, JR.'s guilty plea. This statement of facts does not preclude either party
8
9
from presenting and arguing, for sentencing purposes, additional facts which are
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relevant to the guideline computation or sentencing, unless otherwise prohibited in
11
12
this agreement. Defendant admits to these facts below.

14 A confidential human source (CHS) identified a possible source of supply as
15 Eusevio CHAVALLO. Spokane Police Department utilized the CHS to contact and
16 make two separate purchases of methamphetamine from CHAVALLO.
17

18 On January 2, 2013, the CHS contacted Detective Presta to advise him that he
19 had been contacted by CHAVALLO from telephone number (509) 302-XXXX. The
20 CHS suspected that CHAVALLO contacted the CHS in an attempt to distribute
21 methamphetamine.
22

On January 25, 2013, the CHS made a recorded phone call to CHAVALLO at (509) 302-XXXX and spoke to CHAVALLO about two other individuals involved in this investigation. MR. CHAVALLO DID NOT KNOW THE TWO INDIVIDUALS.

1 On February 19, 2013, the CHS reviewed multiple pictures of Hispanic males,
2 one being Eusevio CHAVALLO. The CHS was able to positively identify
3 CHAVALLO from the photographs.
4

5 On May 3, 2013, the CHS was provided an audio recording device and met
6 with CHAVALLO in the Tri-Cities area. The CHS and CHAVALLO spoke about
7 specific prices for methamphetamine as well as a telephonic code which would be
8 used to order controlled substances over the phone in an attempt to conceal any
9 communications about the trafficking in controlled substances. CHAVALLO was
10 driving a red Chevrolet pick-up bearing Washington License plate number B70145
11 during this meeting.
12

13 On May 14, 2013, the CHS made a recorded phone call to CHAVALLO and
14 ordered one ounce of methamphetamine to be delivered on 05/15/2013. CHAVALLO
15 confirmed the order and agreed to deliver the methamphetamine.
16

17 On May 15, 2013, the CHS was provided with pre-recorded U.S. currency and
18 equipped with an audio recording device before conducting a controlled purchase of
19 one (1) ounce of methamphetamine for \$1,400 from CHAVALLO. CHAVALLO met
20 the CHS at a restaurant located at Third Avenue and Division in Spokane Washington
21 and directed the CHS into the restaurant's rest room. Once inside the rest room,
22 CHAVALLO removed an item from his pocket and gave it to the CHS. The CHS was
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1 able to identify the item as what the CHS believed to be methamphetamine. The CHS
2 then paid CHAVALLO from the pre-recorded U.S. currency for the substance.

3 A portion of the substance the CHS had purchased from CHAVALLO was field
4 tested presumptive positive for methamphetamine. The gross weight of the
5 methamphetamine was approximately 28 grams.
6

7 On June 3, 2013, the CHS made a recorded phone call to CHAVALLO and
8 ordered two ounces of methamphetamine to be delivered on June 4, 2013.
9
10 CHAVALLO confirmed the order and agreed to deliver the methamphetamine.

11 On June 4, 2013, the CHS conducted a controlled purchase of approximately
12 two (2) ounces of methamphetamine for \$2,800 from CHAVALLO. The CHS was
13 provided with pre-recorded U.S. currency and equipped with an audio recording
14 device. Surveillance officers observed CHAVALLO at 400 S. Thor, Spokane,
15 Washington, the pre-arranged location, in his red Chevrolet truck with Washington
16 license plate B70145V.
17

18 Surveillance officers observed CHAVALLO contact the CHS and saw the CHS
19 enter CHAVALLO's vehicle. CHAVALLO drove the CHS for a brief period of time
20 then returned and parked in an area near 400 S. Thor. CHAVALLO then drove the
21 CHS back to his/her vehicle. CHAVALLO departed the location in the red Chevrolet
22 truck. The CHS provided CHAVALLO with the pre-recorded U.S. currency in return
23 for a substance in a plastic bag. A portion of the substance the CHS purchased from
24
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28

1 CHAVALLO was tested and determined to contain 54.4 grams of actual
2 methamphetamine.

3 On June 25, 2013, Detective Presta, Detective Richmond and the CHS
4 made a recorded phone call to CHAVALLO ordering four ounces of
5 methamphetamine to be delivered on June 26, 2013.

6 On June 26, 2013, Task Force Officer Clem was monitoring a residence located
7 at 1217 North Edison Place, Kennewick, Washington where CHAVALLO's vehicle
8 had been seen on previous occasions. Law enforcement observed CHAVALLO exit
9 the residence and place an item in a toolbox located in the bed of the 2002 Chevrolet
10 pickup, bearing Washington license plate B70145V. TFO Clem then observed
11 CHAVALLO leave the residence in the Chevrolet pickup. Tri-Cities Task Force
12 Officers maintained continued surveillance of CHAVALLO after he left his residence
13 and followed CHAVALLO northbound on Highway 395 to Ritzville, Washington and
14 then eastbound on Interstate 90 to a pre-determined location.

15 Officers stopped CHAVALLO on Interstate 90 at the Cheney/Tyler exit
16 area and executed a federal search warrant issued on June 13, 2013. In the bed of the
17 truck, law enforcement officers located a black bag which contained two large baggies
18 of a crystal like substance that appeared to be methamphetamine. The substance was
19 tested and determined to contain 109.0 grams of actual methamphetamine. Officers
20 continued to search the bed of the truck locating a fully loaded 9 mm Kel-Tec, Model
21 PLEA AGREEMENT - 9
22 ChavalloPleaAgreementCounts1&4
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IN A LOCKED TOOL BOX RMS ECG NAD

1 No. P11, Serial No. A7V46, with one round of ammunition in the chamber and nine
2 rounds in the magazine. The firearm was located in a boot directly underneath the
3 black bag containing the methamphetamine. Officers also located a scale in a tennis
4 shoe in the same area of the truck. The vehicle CHAVALLO was driving was
5 registered in his name.

6
7 After waiving his *Miranda* rights, CHAVALLO admitted he was in the
8 business of selling methamphetamine.
9

10 6. The United States Agrees:

11 (a). Dismissals:

12 At the time of sentencing, the United States agrees to move the Court to dismiss
13 counts 2 and 3 of the Superseding Indictment which charge the Defendant with
14 Distribution of 50 grams or more of pure (actual) Methamphetamine and Possession
15 with Intent to Distribute 50 grams or more of pure (actual) Methamphetamine in
16 violation of 21 U.S.C. § 841(a)(1), (b)(1)(A)(viii).
17
18

19 (b). Not to File Additional Charges:

20 The United States Attorney's Office for the Eastern District of Washington
21 agrees not to bring any additional charges against the Defendant based upon
22 information in its possession at the time of this Plea Agreement and arising out of
23 Defendant's conduct involving illegal activity charged in this Information, unless the
24 Defendant breaches this Plea Agreement any time before or after sentencing.
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3 7. United States Sentencing Guideline Calculations:

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5 The Defendant understands and acknowledges that the United States Sentencing
6 Guidelines (hereinafter "U.S.S.G.") are applicable to this case and that the Court will
7 determine the Defendant's applicable sentencing guideline range at the time of
8 sentencing.

9
10 (a). Base Offense Level:

11 (1). Count 1:

12
13 The United States and the Defendant agree that the base offense level for
14 Distribution of a Mixture or Substance Containing a Detectable Amount of
15 Methamphetamine, in violation 21 U.S.C. § 841(a)(1), (b)(1)(C) is 34 based on at
16 least 150 grams but less than 500 grams of actual methamphetamine. See USSG
17 2D1.1(c)(3).

18
19 (2). Count 4:

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21 The United States and the Defendant agree that the guideline sentence for
22 Possession of a Firearm in Furtherance of a Drug Trafficking Crime, in violation of 18
23 U.S.C. § 924(c)(1)(A)(i) is 5 years imprisonment consecutive to any other sentence.
24
25 See USSG 2K2.4(b).

(c). Acceptance of Responsibility:

If the Defendant pleads guilty and demonstrates a recognition and an affirmative acceptance of personal responsibility for the criminal conduct; provides complete and accurate information during the sentencing process; does not commit any obstructive conduct; accepts this Plea Agreement; and enters a plea of guilty no later than the next pre-trial date, the United States will recommend that the Defendant receive a three (3) level downward adjustment for acceptance of responsibility, pursuant to U.S.S.G. §3E1.1(a).

11 The Defendant and the United States agree that the United States may at its
12 option and upon written notice to the Defendant, not recommend a three (3) level
13 downward reduction for acceptance of responsibility if, prior to the imposition of
14 sentence, the Defendant is charged or convicted of any criminal offense whatsoever or
15 if the Defendant tests positive for any controlled substance.

18 Furthermore, the Defendant agrees to pay the \$100 mandatory special penalty
19 assessment to the Clerk of Court for the Eastern District of Washington, at or before
20 sentencing, and shall provide a receipt from the Clerk to the United States before
21 sentencing as proof of this payment, as a condition to this recommendation by the
22 United States.
23

(d). Multiple Count Analysis:

Because counts 1 and 4 are connected by a common criminal objective or a common scheme or plan, they form a single group for sentencing purposes resulting in no increase in the final offense level. See USSG § 3D1.1(a)(1); 3D1.2(b).

(e). Final Offense Level:

Therefore, the United States and the Defendant agree that the Defendant's final adjusted offense level would be 31.

(f). Criminal History:

The United States and the Defendant have made no agreement and make no representations as to the criminal history category, which shall be determined after the Presentence Investigative Report is completed.

9. Incarceration:

The United States agrees to recommend a 36 month term of imprisonment on Count 1 and a 60-month consecutive term of imprisonment on Count 4, resulting in a total sentence of 96 months. The Defendant agrees to recommend an 18 month term of imprisonment on Count 1 and a 60-month consecutive term of imprisonment on Count 4, resulting in a total sentence of 78 months.

Pursuant to Fed.R.Crim.P. 11(c)(1)(C), the Defendant reserves the right to withdraw his plea if the Court imposes a term of imprisonment in excess of 96

1 months and the United States reserves the right to withdraw if the Court imposes a
2 term of imprisonment less than 78 months.

3 10. Criminal Fine:

4 The United States and the Defendant are free to make whatever
5 recommendation concerning the imposition of a criminal fine that they believe is
6 appropriate.

7 11. Supervised Release:

8 The United States and the Defendant agree to recommend that the Court impose
9 a five (5)-year term of supervised release to include the following special conditions,
10 in addition to the standard condition of supervised release:

11 (a). that the Defendant participate and complete such drug testing and drug
12 treatment programs as the Probation Officer directs;

13 (b). that the Defendant's person, residence, office, vehicle, and belongings
14 are subject to search at the direction of the Probation Officer.

15 The ultimate term of supervised release is not subject to the Fed.R.Crim.P.
16
17 11(c)(1)(C) agreement.

18 12. Mandatory Special Penalty Assessment:

19 The Defendant agrees to pay the \$200 mandatory special penalty assessment to
20 the Clerk of Court for the Eastern District of Washington, at or before sentencing,
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1 pursuant to 18 U.S.C. § 3013 and shall provide a receipt from the Clerk to the United
2 States before sentencing as proof of this payment.

3 13. Payments While Incarcerated:

4 If the Defendant lacks the financial resources to pay the monetary obligations
5 imposed by the Court, the Defendant agrees to earn the money to pay toward these
6 obligations by participating in the Bureau of Prisons' Inmate Financial Responsibility
7 Program.

8 14. Additional Violations of Law Can Void Plea Agreement:

9 The Defendant and the United States agree that the United States may at its
10 option and upon written notice to the Defendant, withdraw from this Plea Agreement
11 or modify its recommendation for sentence if, prior to the imposition of sentence, the
12 Defendant is charged or convicted of any criminal offense whatsoever or if the
13 Defendant tests positive for any controlled substance.

14 15. Appeal Rights:

15 In return for the concessions that the United States has made in this Plea
16 Agreement, the Defendant agrees to waive the right to appeal the sentence and
17 conviction if the Court imposes a total sentence of not more than 96 months
18 imprisonment, a 5-year term of supervised release, waives imposition of the fine, and
19 imposes not more than a \$200 special penalty assessment.

1 Defendant further expressly waives his right to file any post-conviction motion
2 attacking his conviction and sentence, including a motion pursuant to 28 U.S.C.
3 §2255, except one based on ineffective assistance of counsel based on information not
4 now known by Defendant and which, in the exercise of due diligence, could not be
5 known by Defendant by the time the Court imposes sentence. Should the Defendant
6 successfully move to withdraw from this Plea Agreement or should the Defendant's
7 conviction on Count One of the Indictment be dismissed, set aside, vacated, or
8 reversed, this Plea Agreement shall become null and void; the United States may
9 move to reinstate all counts of Indictment No. 13-CR-00100-RMP; and the United
10 States may prosecute the Defendant on all available charges. Nothing in this Plea
11 Agreement shall preclude the United States from opposing any post-conviction
12 motion for a reduction of sentence or other attack of the conviction or sentence,
13 including, but not limited to, proceedings pursuant to 28 U.S.C. § 2255 (writ of habeas
14 corpus).
15

16. Inapplicability of 18 U.S.C. § 3582(c)(2):

17 The Defendant stipulates and agrees that if the Court accepts the parties' Fed.
18 R. Crim. P. 11(c)(1)(C) recommendations and imposes a total prison term of no longer
19 than ninety-six (96) months, that the sentence is *not* "based on" a sentencing range
20 established by the Sentencing Guidelines and, as such, acknowledges that 18 U.S.C.
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1 § 3582(c)(2), which authorizes the Court to modify the sentence based on a
2 subsequent change in the applicable guideline, is not applicable.

3 17. Integration Clause:

4
5 The United States and the Defendant acknowledge that this document
6 constitutes the entire Plea Agreement between the United States and the Defendant,
7 and no other promises, agreements, or conditions exist between the United States and
8 the Defendant concerning the resolution of the case. This Plea Agreement is binding
9 only upon the United States Attorney's Office for the Eastern District of Washington,
10 and cannot bind other federal, state or local authorities. The United States and the
11 Defendant agree that this agreement cannot be modified except in a writing that is
12 signed by the United States and the Defendant.
13

14 Approvals and Signatures

15
16 Agreed and submitted on behalf of the United States Attorney's Office for
17 the Eastern District of Washington.

18
19 MICHAEL C. ORMSBY
20 United States Attorney

21 
22 Matthew F. Duggan
23 Assistant U.S. Attorney

24 5-28-14
25 _____
26 Date

27
28 I have read this Plea Agreement and have carefully reviewed and discussed
every part of the agreement with my attorney. I understand and voluntarily enter into
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ChavalloPleaAgreementCounts1&4

1 this Plea Agreement. Furthermore, I have consulted with my attorney about my
2 rights, I understand those rights, and I am satisfied with the representation of my
3 attorney in this case. No other promises or inducements have been made to me, other
4 than those contained in this Plea Agreement and no one has threatened or forced me in
5 any way to enter into this Plea Agreement. I am agreeing to plead guilty because I am
6 guilty.

7 *Eusevio Chavallo*

8 _____
9 EUSEVIO CHAVALLO, JR.
10 Defendant

6-4-14

Date

11
12
13 I have read the Plea Agreement and have discussed the contents of the
14 agreement with my client. The Plea Agreement accurately and completely sets forth
15 the entirety of the agreement between the parties. I concur in my client's decision to
16 plead guilty as set forth in the Plea Agreement. There is no legal reason why the
17 Court should not accept the Defendant's plea of guilty.
18
19

20
21 *Robert S.*

22 ROBERT M. SEINES
23 Attorney for the Defendant

6-4-14

Date